

¹ In addition to its numerous boilerplate objections, Discovery contends that it should not be obligated to participate in discovery because its threatened withholding of programming from Sky Angel is neither “unfair” nor “discriminatory.” *Objection*, p. 2. The Commission’s discovery procedures, however, are designed to address exactly this type of factual question, particularly in a situation such as here, where the defending party wholly controls the factual basis necessary for the resolution of this question.

In an April 1, 2010 email, Commission staff informed Discovery that it “should promptly inform the Commission of its objection to any discovery request or interrogatory that is not within its control or irrelevant to the dispute.” Notwithstanding this request, Discovery failed to inform the Commission, or Sky Angel, of any such objections until fifteen days later. This delay is consistent with Discovery’s general demeanor throughout this proceeding. For instance, in that same April 1, 2010 email, Commission staff informed Discovery that they “look forward to Discovery’s response to whether an extension of the April 22nd termination of service is possible.” Not until April 14, 2010 did Discovery inform the Commission and Sky Angel that it had “decided not to” extend its threatened termination date of April 22, 2010. These actions occurred after Commission staff granted Discovery’s request to extend the deadlines for its various responsive pleadings.

This pattern of behavior clearly demonstrates that Discovery’s primary objective is to delay this proceeding beyond April 22, 2010, the date on which Discovery has threatened to pull its programming from Sky Angel’s MVPD system. Discovery likely hopes that, by withholding its highly-rated programming, it will force Sky Angel – a nascent, innovative and family-friendly MVPD – to cease operations, and thereby terminate the continuing validity of Sky Angel’s program access complaint.

According to its Objection, Discovery refused to respond to Sky Angel’s Requests in part because the Commission has not yet adopted the parties’ mutually agreed upon protective order and, according to Discovery, Sky Angel’s Requests “seek confidential, proprietary business information without a proper protective order or confidentiality agreement.”² This statement, however, contradicts immediate past practice between the parties. For instance, on April 1, 2010, by e-mail Sky Angel provided confidential documents to Discovery based upon a simple agreement of counsel.

² *Objection*, p. 5.

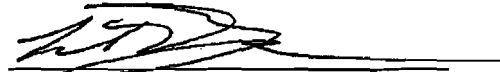
On April 13, 2010, Discovery provided to Sky Angel, via email, an unredacted copy of its "Opposition to Sky Angel Emergency Petition for Temporary Standstill" after the parties agreed to be bound by the protective order "as if it were already entered." Discovery is willing to shift positions on a daily basis in order to delay its compliance with the Commission's rules.

In addition, by withholding all information while awaiting the entry of an agreed-to protective order, in essence, Discovery has claimed that every bit of information asked for in Sky Angel's Requests is "confidential, proprietary business information." As a consequence, if Discovery eventually produces documents, or answers interrogatories, that are not confidential or proprietary, then Discovery will be in violation of §76.1003(j) of the Commission's rules and will have affirmatively misrepresented to the Commission the status of documents and information under its custody and control.

From the start, Discovery has attempted to delay the pleading cycle of, and thus the ultimate decision regarding, this program access dispute. Undoubtedly, Discovery hopes that the Commission will not have an opportunity to act prior to April 22, 2010, thereby allowing Discovery to unjustifiably and unreasonably withhold its programming from Sky Angel in violation of the Commission's program access rules. Discovery's Objection, and its wholesale refusal to provide any of the information requested by Sky Angel and necessary for the resolution of this proceeding, even publicly available or non-confidential information, are attempts to hinder the Commission from properly forestalling Discovery's threatened action. In short, Discovery is flouting the Commission's rules and showing no respect or deference to the Commission's staff. Sky Angel respectfully requests that the Commission immediately grant Sky Angel's Emergency Petition for Temporary Standstill and compel Discovery to answer the interrogatories and produce the documents called for in Sky Angel's narrowly-focused and highly-relevant Requests.

Respectfully submitted,

SKY ANGEL U.S., LLC

A handwritten signature in black ink, appearing to read 'CR Naftalin', is written over a horizontal line.

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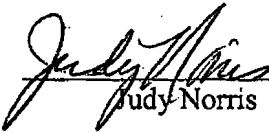
April 16, 2010

Its Attorneys

CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary in the firm of Holland & Knight LLP, hereby certify that on the 16th day of April, 2010, copies of the foregoing Motion to Compel, were sent via email and deposited in the U.S. mail, first-class, postage prepaid, to:

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